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JEROLD L. JACOBS

October 13, 1998

Hand Delivery

Magalie Roman Salas, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: **CS Docket No. 98-120**  
**Carriage of the Transmissions of**  
**Digital Television Broadcast Stations**

Dear Ms. Salas:

On behalf of our client, Shockley Communications Corporation, licensee or proposed assignee of six commercial television stations in Wisconsin and Minnesota, transmitted herewith for filing are an original and nine (9) copies of its "**Comments of Shockley Communications Corporation**" in response to the Notice of Proposed Rule Making in the above-referenced Docket.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,

  
Jerold L. Jacobs

Enc.

cc: William Johnson, Deputy Chief,  
Cable Services Bur. (FCC – By Hand – w/enc.)  
Ms. Judy Boley (FCC – By Hand – w/enc.)  
Mr. Timothy Fain, OMB Desk Officer

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Carriage of the Transmissions	)	CS Docket No. 98-120
of Digital Television Broadcast Stations	)	
	)	
Amendment to Part 76	)	
of the Commission's Rules	)	

TO: The Commission

**COMMENTS OF SHOCKLEY COMMUNICATIONS CORPORATION**

SHOCKLEY COMMUNICATIONS CORPORATION ("SCC"), licensee or proposed assignee of six commercial television stations in Wisconsin and Minnesota, by its attorneys, hereby comments on the digital broadcast television ("DTV") cable must-carry issues discussed in Section IV ("Carriage and Retransmission Consent Issues") of the Notice of Proposed Rule Making in CS Docket No. 98-120, FCC 98-153, released July 10, 1998. In support whereof, SCC shows the following:

**I. Introduction**

1. SCC is licensee of Wisconsin Stations WKOW-TV, Madison (DMA #84), WAOW-TV, Wausau (DMA #136), WXOW-TV, LaCrosse (DMA #129), and WQOW-TV, Eau Claire (DMA #129), proposed assignee of Station WYOW-TV, Eagle River, Wisconsin (DMA #136), and licensee of Station KXLT-TV, Rochester, Minnesota (DMA #153). SCC has been a TV licensee since 1995, but its President, Terry K. Shockley, first entered the TV business more than 30 years ago, and he has served as President of the ABC Network Affiliates Association and

President and a Board member of the Wisconsin Broadcasters Association. Thus, SCC offers these Comments as an experienced group owner of TV stations in both Top-100 and smaller TV markets, which also has worked with local cable systems for many years.

2. In addition, and most importantly, SCC is in the forefront of the DTV roll-out. Specifically, Station WKOW-DT, Channel 26, Madison, Wisconsin, received one of the Commission's first DTV authorizations (File No. BPCDT-971117KE, granted January 6, 1998), and it has already constructed its DTV facilities, using a Comark digital transmitter and a Dielectric antenna that have been installed on a community candelabra tall tower (1450 feet) just west of Madison. WKOW-DT is unique among emerging DTV stations in that it is using a channel combiner to merge its NTSC and DTV UHF signals (adjacent Channels 27 and 26, respectively) and feed them to a single antenna for broadcast. WKOW-DT has commenced program tests and is now upconverting WKOW-TV's standard schedule from NTSC to 720P. When ABC's HDTV programming becomes available on November 1, 1998, WKOW-DT will have a mixture of upconverted and HDTV programming. Meanwhile, the test data that SCC is gathering should be very helpful to Comark, Dielectric, and the many other TV stations that may experience significant economies from the "N minus one" configuration technology, just as WKOW-DT has done.

## **II. FCC Should Adopt Full, Mandatory, and Immediate Cable Carriage of All Local Commercial DTV Signals**

3. SCC fully supports the position of the National Association of Broadcasters ("NAB") that the Commission should adopt full, mandatory, and immediate cable carriage of all local commercial DTV signals, as they come on-air under the Commission's staggered DTV implementation schedule, up to the one-third capacity cap set for cable system must-carry

stations by §614 of the Communications Act of 1934, as amended (“the Act”), 47 U.S.C. §534. TV stations’ must-carry rights on cable systems were affirmed by the Supreme Court in Turner Broadcasting System v. FCC, 117 S.Ct. 1174 (1997), and SCC maintains that §614(b)(4)(B) of the Act is rendered meaningless if the Commission does not interpret it to require mandatory cable carriage of DTV signals as soon as commercial TV stations begin broadcasting them.

4. Specifically, without cable carriage of DTV signals from the outset, the DTV roll-out during 1998-2002 will literally go unviewed and unnoticed and will have little impact on consumer purchases of new DTV-capable television sets in cable communities with substantial cable penetration. For example, SCC believes that Madison, Wisconsin is a ripe market for DTV adopters, because of its low unemployment rate and highly educated populace. However, according to the 1998 edition of *Television and Cable Factbook* (p. D-1759), there is 66% cable penetration in Madison (85,105 subscribers out of 129,603 homes passed). Thus, the effect of WKOW-DT’s roll-out in Madison will clearly be diminished if cable subscribers do not receive the DTV signal. Likewise, since one-third of Madison’s homes are not cabled, it is important for SCC’s WKOW-TV to retain its NTSC analog signal carriage on Madison’s cable system throughout the DTV transition period. Moreover, recent industry tests have indicated that there are substantial technical problems in receiving HDTV signals off-the-air in urban areas. Therefore, especially in urban areas, the importance of cable carriage of DTV (and HDTV) signals from the outset of the DTV roll-out is manifest. Only in that way will the viewing public who have DTV-capable TV sets but cannot receive DTV (or HDTV) signals off-the-air be able to obtain DTV (or HDTV) reception via cable and thereby reap the benefits of DTV service.

5. SCC also fully supports the NAB’s position that the mandatory carriage of DTV signals should be “pass through”, *i.e.*, cable systems should be required to pass through the

entirety of all local broadcast signals (except for subscription services excluded by statute), without material degradation (i.e., in original format), as part of the system's basic service tier of programming, and retaining the same "branded" channel identity that is already associated with each DTV signal.

6. Of course, SCC recognizes that its DTV must-carry requirement may warrant exceptions for small or otherwise incapable cable systems. SCC believes that the Act's current definition of a small cable system as having 12 or fewer activated channels (§614(b)(1)(A)) is a satisfactory benchmark for small systems, and that larger systems should be required to seek waiver of the immediate DTV carriage requirement, if necessary.

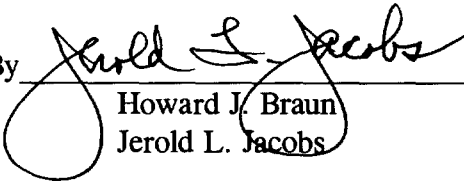
### **III. Conclusion**

7. Immediate DTV carriage by cable systems is very important if the DTV roll-out and transition period are to have any impact upon TV viewers and consumers. The cable industry's substantial and ongoing efforts to upgrade their systems and increase their channel capacity nicely dovetails with the staggered roll-out of DTV stations, which is just beginning. Given these two complementary efforts, SCC is confident that most cable systems will easily be able to accommodate the addition of local commercial DTV signals up to their one-third activated capacity cap. Beyond that, cable operators will have discretion in determining which local DTV must-carry stations they will actually add. However, at this point in time, the general principle of must-carry rights for local commercial DTV signals should be established by Commission rule, and, absent waiver or exceeding the one-third capacity cap, cable systems should be required to add DTV signals as they come on-line.

WHEREFORE, in light of the foregoing, SCC respectfully requests that the Commission should amend §76.56(b) of its cable signal carriage rules in accordance with the above Comments.

Respectfully submitted,

SHOCKLEY COMMUNICATIONS  
CORPORATION

By   
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